

DEC 09 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

FELIX ROMERO-PINEDA,

Defendant - Appellant.

No. 05-10256

D.C. No. CR-03-00474-PMP

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted December 7, 2005^{**}
San Francisco, California

Before: KOZINSKI and SILVERMAN, Circuit Judges, and BENITEZ, District
Judge.^{***}

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable Roger T. Benitez, United States District Judge for the
Southern District of California, sitting by designation.

Romero-Pineda challenges the district court's denial of his motion to suppress four pounds of heroin found in the trunk of his car in the course of a consensual search arising from a traffic stop. The district court correctly found that police had probable cause to initiate a traffic stop after seeing Romero-Pineda make an unsafe lane change. The officers' initial contact was limited to questions reasonably related to the traffic infraction and thus did not exceed the scope of the traffic stop. *See United States v. Chavez-Valenzuela*, 268 F.3d 719, 724 (9th Cir. 2001), *amended by* 279 F.3d 1062 (9th Cir. 2002) ("An officer must initially restrict the questions he asks during a stop to those that are reasonably related to the justification for the stop."). The duration of this initial stop was five minutes and also reasonable. *See Pierce v. Multnomah County*, 76 F.3d 1032, 1038 (9th Cir. 1996).

The district court did not clearly err in finding that Romero-Pineda's consent to search his car was voluntary. The officer did not initiate the second conversation concerning contraband until after Romero-Pineda had been told twice that he was free to leave. A reasonable person in his situation would not have believed he was not free to leave. *See California v. Hodari D.*, 499 U.S. 621, 627–28 (1991) (holding encounter not consensual if "reasonable person would

have believed that he was not free to leave”) (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (plurality opinion)).

These facts are also distinguishable from those in *Chavez-Valenzuela*, where we held that subsequent immediate questioning about contraband during a traffic stop was an improper escalation beyond the scope of the traffic stop. 268 F.3d at 728. There, the defendant had been given back his license and registration, but he had not been told he was free to leave. *Id.* at 724. We held that a reasonable person in his position would not have felt free to leave, and thus his consent to search the car was tainted and invalid. *Id.* at 724-25.

Here, however, Romero-Pineda was told twice that he was free to leave. Therefore his participation in the second conversation and his subsequent consent to search the car were voluntary.

AFFIRMED.